

**MINUTES
URBAN COUNTY PLANNING COMMISSION
ZONING ITEMS PUBLIC HEARING**

October 27, 2011

- I. **CALL TO ORDER** – The meeting was called to order at 1:30 p.m. in the Council Chamber, 2nd Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Will Berkley; Carla Blanton; Marie Copeland; Mike Cravens, Chair; Mike Owens; Derek Paulsen (left at 3:02 p.m.); Frank Penn; Lynn Roche-Phillips (left at 3:35 p.m.); and William Wilson.

Planning staff members present: Chris King, Director; Bill Sallee; Barbara Rackers; Jimmy Emmons; Traci Wade; Tom Martin; and Stephanie Cunningham. Other staff members present were Rochelle Boland, Department of Law; and Captain Charles Bowen, Division of Fire and Emergency Services.

- II. **APPROVAL OF MINUTES** – A motion was made by Mr. Penn, seconded by Mr. Paulsen, and carried 9-0 (Beatty and Brewer absent) to approve the minutes of the September 22, 2011, Planning Commission meeting.

- III. **POSTPONEMENTS AND WITHDRAWALS** – No such items were presented.

- IV. **ZONING ITEMS** - The Zoning Committee met on Thursday, October 6, 2011, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Carla Blanton, Mike Cravens, Lynn Roche-Phillips, and Bill Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. **ABBREVIATED PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS**

The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

Abbreviated public hearings will be held on petitions meeting the following criteria:

- The staff has recommended approval of the zone change petition and related plan(s)
- The petitioner concurs with the staff recommendations
- Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

- B. **FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS** – Following abbreviated hearings, the remaining petitions will be considered.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) proponents (10 minute maximum OR 3 minutes each)
 - (b) objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
 - (a) petitioner's comments (5 minute maximum)
 - (b) citizen objectors (5 minute maximum)
 - (c) staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s)

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

1. **THE LEXINGTON HEARING & SPEECH CENTER, INC., ZONING MAP AMENDMENT & ROGERS & CLARK SUBDIVISION, LOTS 21-24 ZONING DEVELOPMENT PLAN**

- a. MARV 2011-12: THE LEXINGTON HEARING & SPEECH CENTER, INC. (10/27/11)* - petition for a zone map amendment from a Single Family Residential (R-1D) zone to a Professional Office (P-1) zone, for 0.99 net (1.19 gross) acres, for property located at 154 and 158-162 North Ashland Avenue. Dimensional variances have also been requested with this zone change.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 3) recommends Semi-Public (SP) future land use for the subject property. The petitioner proposes to rezone the property in order to renovate the existing buildings for limited professional office uses. The applicant has proposed conditional zoning restrictions and requested multiple dimensional variances in association with the requested zone change.

The Zoning Committee Recommended: **Postponement**, for the reason provided by staff.

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The Staff Recommended: **Postponement**, for the following reason:

1. The staff needs additional time to assess the requested zone change to further consider the existing on-street parking situation along North Ashland Avenue and to conduct site research as to the petitioner's contention that the structures are no longer viable for residential use.

b. REQUESTED VARIANCES

1. Reduce the minimum off-street parking requirements by 50%, from 49 spaces to 25 spaces.
2. Increase the maximum building height from 8 feet to 20 feet for 154 N. Ashland Ave. and from 0 feet to 24 feet for 158-162 N. Ashland Ave.
3. Reduce the minimum side yard for 158-162 N. Ashland Ave. from 12 feet to 9 feet and the side yard for 154 N. Ashland Ave from 12 feet to 2 feet.
4. Reduce zone-to-zone perimeter screening requirements from 15 feet to 0 feet and to eliminate the requirement for trees and shrubs.
5. Reduce the minimum required interior landscaping for the vehicular use area from 5% to 3% for 158-162 N. Ashland Ave.

The Zoning Committee Recommended: **Withdrawal, Approval, and Postponement**, for the reasons provided by staff.

The Staff Recommended: **Withdrawal** of the requested height variance for 158-162 N. Ashland Ave., for the following reason:

- a. The requested variance is not necessary because the existing 24' tall structure is located 9 feet from the nearest property line, and the P-1 zone height-to-yard ratio will allow up to 27' tall.

The Staff Recommended: **Approval** of the requested setback and height variance for 154 N. Ashland Ave., for the following reasons:

- a. Granting the requested variances should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The existing structures were originally built as residences and have been used as the school and daycare over the past 50 years. The proposed adaptive reuse of these structures is a reasonable justification for the yard and height variances.
- b. Approval of the variances will not result in an unreasonable circumvention of the Zoning Ordinance. The purpose of the ordinance related to setbacks and height is to increase compatibility with surrounding uses. The adaptive reuse of these buildings accomplishes the same goal.
- c. The special circumstance that applies to the subject properties that serves to justify the variances is the adaptive reuse of the existing development.
- d. Strict application of the requirements of the Zoning Ordinance would create an unnecessary hardship to the applicant, and would likely lead to destruction of the existing structures.
- e. The circumstances surrounding this request are not the result of actions taken by the applicant since the adoption of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. Provided the Urban County Council rezones the property P-1; otherwise, any Commission action of approval of this variance is null and void.
2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, or as amended by a future Development Plan approved by the Commission, or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
3. A note shall be placed on the Zoning Development Plan indicating the variance that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).
4. Prior to any construction, the applicant shall obtain a building permit and all applicable Federal, State, and Local approvals associated with the identified floodplain.
5. The side yard and height variances are conditioned upon the adaptive reuse of the existing structures as depicted on the preliminary development plan. If the structures are to be purposefully demolished, any new structures built on the property shall comply with the required yard and height restrictions in the P-1 zone.

The Staff Recommended: **Postponement** of the requested landscaping and parking variances, for the following reasons:

- a. The Landscape Review Committee is scheduled to meet on August 16, 2011, and may make a substantive recommendation on the requested landscaping variances.
- b. More time is needed to review the impact that the parking variance may have on the on-street parking on N. Ashland Ave. Public Schools restart on August 11, 2011, and a site evaluation of the on-street parking while school is in session may have an impact on the parking variance recommendation.
- c. ZDP 2011-69: ROGERS & CLARK SUBDIVISION, LOTS 21, 22, 23 & 24 (LEXINGTON HEARING & SPEECH CENTER) (10/27/11)* - located at 154-162 North Ashland Avenue. **(Mark McCain)**

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The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property P-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewer information, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Correct plan title.
7. List name and address of developer, if applicable.
8. Denote written scale.
9. Reorient the plan such that the north arrow is toward top of page.
10. Denote: Signage shall be in accordance with Article 17 of the Zoning Ordinance.
11. Correct note #5 and delete tree protection note #7.
12. Denote that there will be reciprocal access and parking.
13. Resolve entrance encroachment into 164 North Ashland Avenue.

Zoning Presentation: Ms. Wade began the staff's zoning presentation by distributing copies of six letters and emails received by staff in opposition to this request. Using the rendered zoning map, she briefly oriented the Commission to the location of the subject property on the southeast side of North Ashland Avenue. The subject property is zoned for single-family residential use, as is the majority of the surrounding area. The Mentelle Park area, to the southeast, is zoned R-2. Zoning in the vicinity of the subject property includes B-1 at the intersection of Main Street and Ashland Avenue; B-4 zoning along National Avenue, which has been developed as an adaptive reuse project; and B-1 and P-1 along Walton Avenue. Ms. Wade stated that North Ashland Avenue is characterized by a mix of uses, although all the properties are zoned for residential use. She noted that, in addition to the subject property, which was formerly used for a school, there are two places of worship, Ashland Elementary School, and accessory uses for the churches.

Ms. Wade said that the subject property was originally platted in 1890, although there were no zoning regulations in existence at that time. The first local zoning category that was applied to the property was "Residential B." The 1969 zoning atlas identified the subject property as in an R-3 zone; it was downzoned to an R-2 zone in 1975, and then to the current R-1D zone, in 1998. Both of the downzonings were at the request of the area neighborhood. Ms. Wade stated that the subject property had been home to the Lexington Hearing & Speech Center for 50 years, but that facility recently relocated to the former Julia R. Ewan Elementary School property in the Fairway neighborhood. The petitioner is proposing to rezone the property to P-1 in order to allow office uses to locate there.

Ms. Wade displayed several photographs of the subject property and surrounding area, noting the residential character of the structures at the front of the property, the large addition, parking area, and playgrounds to the rear of the structures.

Ms. Wade stated that the 2007 Comprehensive Plan recommends Semi-Public Facility land use for the subject properties, recognizing the prior use as a school and day care center. Since the Commission does not often review properties recommended for Semi-Public use, Ms. Wade said that that category includes uses that benefit the public, but are not publicly owned. The category usually includes places of worship, cemeteries, private education institutions, and private recreation. She explained that some of the allowable uses in the P-1 zone can accomplish the Semi-Public land use, but there are many uses in that zone that do not, including the requested general office use. The Comprehensive Plan also recognizes that, if a Semi-Public land use ceases to exist, and the land becomes available for development, the Planning Commission should consider previous Comprehensive Plans, in addition to relevant current information for the site. The 2001 Comprehensive Plan depicted the same land use for the subject property as the 2007 Plan, but the 1988 and 1996 Comprehensive Plans recommended the subject property for Medium Density Residential use, or 0-10 dwelling units per acre. Ms. Wade noted that the petitioner is not proposing any residential uses for the subject property.

Ms. Wade said that two of the Goals and Objectives of the 2007 Comprehensive Plan that particularly relate to this request are:

Goal 8: Create strategies that enable and encourage appropriate infill and redevelopment of established developments and neighborhoods.

Objective I: Balance the need to accommodate infill and redevelopment in Lexington's older areas with the need to preserve the essential character of historic districts.

Goal 15: Preserve, protect, and enhance the character and quality of existing neighborhoods.

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Objective A: Retain the character, identity, and appearance of vital, successful residential and nonresidential areas.

Objective B: Develop strategies to maintain, preserve, and revitalize existing neighborhoods.

Objective E: Plan for and promote infill and redevelopment that is appropriate in character, density, and design and serves to reinforce the fabric of the neighborhood.

Ms. Wade stated that, while the Comprehensive Plan makes general policy statements regarding infill and redevelopment, it is important to note that there is a delicate balance between redevelopment and protecting established neighborhoods. The staff believes that the proposed P-1 zoning provides less assurance that the neighborhood character and appearance will be preserved than the existing R-1D zone. Ms. Wade stated that the staff spent a great deal of time reviewing this request; they considered the established neighborhood, which is primarily residential in character and zoning, with commercial and mixed-use corridors at the outside, along Main Street, National Avenue, Walton Avenue, and Winchester Road. The staff was concerned about the introduction of non-residential zoning in the middle of an established neighborhood. They recommended that the Planning Commission consider not just the subject property, but the context in which the property is situated. The subject properties are situated mid-block, and are not contiguous with any other non-residential zoning. While non-residential uses have existed in this area for decades, rezoning to permit a Professional Services land use could potentially alter the neighborhood and lead to additional requests for rezoning. For those reasons, the staff believes that the requested P-1 zoning is inappropriate at this location.

Ms. Wade stated that the staff recognizes that the subject properties have limited practical use as single-family residences, given their existing configuration, but they do not believe that that is a justification for rezoning to a more intense zone than what is recommended by the Comprehensive Plan. The staff contends that the relocation of the school and day care have not resulted in a significant unanticipated change in this immediate area since the adoption of the 2007 Comprehensive Plan, and they believe that the structures remain viable for Semi-Public land use. The petitioner has proposed conditional zoning restrictions and development plan restrictions in an attempt to reduce the possible impact of a land use change on the surrounding neighborhood; however, ultimately the staff cannot support such a change at this location. Ms. Wade stated that the Zoning Committee recommended postponement of this request at their meeting in August.

The staff is recommending disapproval of this request, for the following reasons:

The Staff Recommends: Disapproval, for the following reasons:

1. The requested Professional Office (P-1) zoning is not in agreement with the 2007 Comprehensive Plan, for the following reasons:
 - a. The Plan recommends Semi-Public Facilities land use, which includes facilities that benefit the public, but are not publicly owned. The proposed use of professional offices is not included in the Plan's definition of the Semi-Public Facilities land use category.
 - b. The Plan states that if a semi-public land use should cease to continue, then previous Comprehensive Plan land use recommendations should be considered by the Planning Commission in assessing potential redevelopment. The 2001 Comprehensive Plan recommends Semi-Public Facilities; however, previous Comprehensive Plans recommend Medium Density Residential (MD) future land use, defined as 5-10 dwelling units per acre. No residential use is proposed for the property.
 - c. The Goals and Objectives of the 2007 Comprehensive Plan, in particular Goals #8 and #15, support preserving, protecting, and enhancing established neighborhoods; balancing the need to accommodate redevelopment with the need to preserve the essential character of historic areas; and retaining the character, identity and appearance of vital, successful residential and non-residential areas. The proposed P-1 zone provides less assurance that the neighborhood character and appearance will be preserved than the existing R-1D zone.
2. The proposed rezoning to the Professional Office (P-1) zone is inconsistent with previous Planning Commission and Council actions to downzone the subject properties and the surrounding neighborhood in 1975 and 1998.
3. The proposed P-1 zone is not appropriate for the subject property for the following reasons:
 - a. The proposed P-1 zone is not contiguous to another office or business zone, and would be located mid-block, several properties removed from any non-residential zone.
 - b. Although existing non-residential uses currently exist along North Ashland Avenue, altering the zoning to allow a more intense land use could lead to additional requests for non-residential zoning in this immediate area.
 - c. The relocation of the former school and daycare center at this location has not resulted in a significant unanticipated change of a physical, social or economic nature since the Comprehensive Plan was adopted in 2007. The property is well suited for Semi-Public Facilities land use.

Commission Questions: Ms. Copeland asked when the neighborhood was downzoned. Ms. Wade answered that the area was downzoned from R-3 to R-2 in 1975, and from R-2 to R-1D in 1998. Ms. Copeland stated that it appeared that the residents had been working on protecting the character of their neighborhood for over 30 years.

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Development Plan Presentation: Mr. Martin presented the corollary preliminary development plan submitted in conjunction with this zone change, noting that it depicts conditions as they currently exist. The petitioner proposes no physical changes to the property as part of this rezoning request. The plan depicts one building, which is residential in appearance, and is just over 2,000 square feet in size; and a larger structure, which is just over 9,000 square feet in size. There is an existing parking lot, with one-way traffic movement and three access points to North Ashland Avenue. Parking is located to the rear of the existing structures, as are the two playground areas.

Mr. Martin stated, for the benefit of the citizens in the audience, that the staff reviewed the proposed development plan as if the requested P-1 zoning was already in place. He said that the Subdivision Committee reviewed the plan, and recommended approval, subject to the 13 conditions as listed on the agenda. The petitioner subsequently submitted a revised plan, which met several of the clean-up conditions, so # 6-11 and #12 could now be deleted, if the Commission so chooses.

Variance Presentation: Mr. Emmons began the staff's presentation on the variance reports by noting that the Commission members had received copies of the supplemental staff report. He entered the minutes of the Landscape Review Committee meeting and the staff's North Ashland Avenue parking analysis into the record as exhibits.

Mr. Emmons used a rendered development plan to indicate the locations of the proposed variances for the Commission. He said that the petitioner is requesting a total of five variances, in three categories: setbacks and height; landscaping; and parking. All of the variances are being requested in order to allow the current configuration of the site to meet the requirements of the proposed P-1 zone. Mr. Emmons noted that the staff is recommending withdrawal of the requested height variance for 158-162 North Ashland Avenue. The subject property was originally three separate pieces of property; when the petitioner constructed the connection between the two houses, they built over the property line, which effectively combined two of those properties into one lot. The staff determined that the requested height variance for that property was no longer necessary, so they are recommending that that portion of the request be withdrawn.

Mr. Emmons stated that the other two requested height and yard variances are related. He explained that, in the P-1 zone, the side yard requirement is 12 feet from the property line. There is also a 3:1 height-to-yard ratio requirement; therefore, if the minimum 12' side yard was provided, a building height of 36' would be allowed. In this case, there are two side yards that do not meet the 12' requirement. On the 154 North Ashland Avenue property, the existing structure is approximately 2.5' off of the property line, which would only permit a building 8' in height. In order to allow that building to remain as constructed, the petitioner is requesting a variance to the required side yard. On the other side of that structure, there is a 9' side yard. The petitioner is requesting a variance from 9' to 12' for that side of the property. Mr. Emmons said that the staff is recommending approval of all the height and yard variances, with the exception of the one that is recommended for withdrawal.

With regard to the proposed landscape variances, Mr. Emmons said that the petitioner is requesting one variance to reduce the required 15' landscape buffer area to 0', since a privacy fence is already installed. The petitioner is also requesting a variance to reduce the interior vehicular use area screening from the required 5% to 3%. Mr. Emmons displayed several photographs of the subject property, noting the areas proposed for variances. He noted that the staff had originally recommended postponement of the landscape variances, pending the meeting of the Landscape Review Committee. The Committee met and recommended approval of the requested landscape variances, but they noted that care should be taken to preserve as many of the existing mature trees on the site as possible.

Mr. Emmons stated, with regard to the requested parking variances, that the subject property would require a total of 49 parking spaces if the square footage of the buildings was completely developed. There are 25 parking spaces on site, so the petitioner is requesting a 50% reduction to the parking requirement. Mr. Emmons noted that, when the staff considers parking variances, there are three areas on which they focus: the walkability of the area; the parking generator for the proposed use; and the availability of on-street parking spaces. The staff believes that the North Ashland Avenue neighborhood is very walkable. The proposed office use of the property would indicate that the highest parking generator needed to be considered. If the subject property were to be developed as a church or day care center under the proposed P-1 zoning, the proposed parking generator would go down.

With regard to the availability of on-street parking, Mr. Emmons stated that the staff's research focused on a two-block area, from Bullock Place to Hambrick Avenue. Including all the spaces on both sides of the road, the staff found that there are approximately 30 on-street parking spaces in the vicinity of the subject property. The staff studied the area for approximately one week, at various times during the day, including the 2:00 – 3:00 p.m. time frame in which Ashland Elementary School is dismissed. The staff concluded that there are generally 20 – 25 available on-street parking spaces in the area at most times during the day, with area residents using approximately seven spaces. The staff is recommending approval, therefore, of the requested parking variance, in addition to all of the other requested variances, with the exception of the one which is recommended for withdrawal.

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Petitioner Presentation: Bruce Simpson, attorney, was present representing the petitioner. He stated that the petitioner had operated a school and day care center on the subject properties for 42 years, until their recent relocation to the former Julia R. Ewan School property. The subject properties have been on the market for over 14 months with little interest, except from several non-profit entities. The Child Advocacy Center, which is currently located on Walton Avenue, has a contract to purchase the properties at 158 and 162 North Ashland Avenue, in order to relocate their facility there. A local attorney has contracted to purchase the property at 154 North Ashland Avenue. Mr. Simpson asked everyone who was in attendance to support this proposed rezoning to stand; approximately 15 people stood.

Mr. Simpson said that the subject property has several challenges. It has existed as a non-residential use since 1969, when the Zoning Ordinance allowed schools as a permitted use in the R-1D zone. The Ordinance has since changed, and a conditional use permit is now required in order to operate a school in a residential zone; the Children's Advocacy Center has applied for two conditional use permits since they located on Walton Avenue. Mr. Simpson stated that he believed that the Children's Advocacy Center has been a good neighbor in its present location, and would continue to do so if they relocate their facility to the subject property. He noted that, although some of the neighborhood residents had expressed concern about the use of the property at 154 North Ashland Avenue as a law office, he believed that it would have very little impact on the surrounding residents. The hours of operation would be from 8:00 a.m. to 5:00 p.m. only, with no weekend operation, and there would be only five employees present. The daycare center that formerly operated on that property had nine full-time staff members; nine part-time staff members; and 38 children on the site, five days a week. The petitioner contends, therefore, that the use of that property for a law office would have much less impact on the property than the former child care use, as would the Child Advocacy Center on the other subject parcel.

Mr. Simpson stated that, after filing this rezoning request, the petitioner learned that some of the area residents were concerned about the proposal, so they requested a postponement in order to have a neighborhood meeting. The petitioner invited everyone in the required notification area to attend, and they discussed residents' concerns about what types of uses could locate on the subject property. At that meeting, the area residents asked the petitioner to remove private clubs from the list of allowable uses on the property, to which the petitioner agreed. Following the full neighborhood meeting, the petitioner met with the board of directors of the Mentelle Park Neighborhood Association. Mr. Simpson said that the Lexington Hearing & Speech Center had been a good neighbor to the area residents, and they wanted to show their willingness to help find uses that would be positive additions to the neighborhood to locate on the subject property.

With regard to the allowable uses in the requested P-1 zone, Mr. Simpson said that the petitioner is offering to limit those uses by 65%. He explained that the only allowable uses would be: offices for business, professional, real estate, government, civic, social, fraternal, political, religious, and charitable organizations; schools for academic instruction; libraries; art museums; reading rooms; studios for the teaching of fine arts, photography, drama, dance and theater; community center; house of worship; associated schools for religious instruction; kindergartens, and nursery schools; child care centers for four or more children; and dwelling units on the upper floors. The petitioner's intent in offering those restrictions is to ensure that any P-1 use that locates on the subject property will not have an adverse impact on the surrounding neighborhood. At the request of the neighboring residents, the petitioner also made a commitment to impose a development plan condition that would require that, in the event that any of the residential structures are destroyed by fire or other natural disaster, they would have to be rebuilt as residential structures, to operate within the limited professional office uses proposed by the petitioner. The only exception to that condition would be the large newer addition to the structure located at 158-162 North Ashland Avenue. Mr. Simpson noted that that is not a residential structure, and it would be allowed to be replaced if destroyed by fire. The petitioner made all of these commitments to maintain the subject properties as they exist today in order to help preserve the character of the neighborhood.

Mr. Simpson said that, since the subject properties were placed on the market, there have been no inquiries about purchasing the parcels for residential use, and very limited interest in using them for professional office type uses. He noted that the structure at 158 North Ashland Avenue is almost 7,000 square feet in size, and it would be very difficult to sell it for a single family residential use. The cost of removing the structure would be prohibitive, and the removal of a useful building could be seen as wasteful. Converting the structures for residential use would also be extremely costly. The petitioner believes that, if the subject properties remain zoned for residential use, no one would be willing to buy them, and the existing structures would fall into disrepair. Mr. Simpson stated that the structures have drop ceilings, with exposed pipes; commercial sprinkler systems; and non-residential wiring, and they have no kitchen facilities, bathtubs, or showers, all of which would make use of the structures for residences unlikely.

Referring to the exhibit booklet he had previously distributed to the Commission members, Mr. Simpson said that he had included Article 8-5 of the Zoning Ordinance, which lists the allowable conditional uses in residential zones. He stated that, should the Commission choose to disapprove this proposed rezoning, a conditional use permit could be obtained to allow: kindergartens for four or more children, but not more than 12; home occupations; temporary real estate office; cemetery or mausoleum; outdoor commercial or non-commercial recreational facilities, such as a golf course; zoological garden; sportsman farm; riding stables; fishing lake; non-commercial swimming pools, tennis

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courts, campgrounds, or private clubs. The petitioner has agreed to prohibit private clubs on the subject property, but they contend that very few of those possible conditional uses would be appropriate in the North Ashland neighborhood. Again referring to Article 8-5, Mr. Simpson explained that churches, Sunday schools, and parish houses could also be permitted on the subject properties as conditional uses, but no such organizations had expressed any interest in locating there in the last 14 months. The only remaining appropriate use for the property would be schools for academic instruction, but no schools had expressed an interest in the subject property. The petitioner believes that, if the subject properties remain vacant, they will become a hindrance to the neighborhood, rather than making a positive contribution, and that the Children's Advocacy Center and law office would be good neighbors who would take good care of their properties, thereby increasing the value and integrity of the neighborhood.

Mr. Simpson displayed a rendered zoning map of the subject properties and the surrounding neighborhoods, noting the areas on and adjacent to North Ashland Avenue that were downzoned to R-1D, as well as the large number of properties in the immediate vicinity that are zoned R-2. Also in the immediate vicinity are commercial and professional office zoning along Walton Avenue and East Main Street. Mr. Simpson read the following excerpt from the staff report: "The North Ashland corridor is a mixture of residential and nonresidential uses, including single family dwellings, places of worship, neighborhood business, a public elementary school, townhouses, and numerous warehouses that are proposed for adaptive reuse." He said that the petitioner agrees that the Commission has to be careful when they evaluate proposals in nearby downtown neighborhoods, and must consider the history of the property as well as the character of the neighborhood. However, the petitioner believes that the existing R-1D zoning for the subject property effectively limits its use to schools for academic instruction, of which there are few outside of the public school system in Lexington-Fayette County.

Mr. Simpson stated that the staff noted in their report that the proposed rezoning to P-1 is not in agreement with the recommendations of the 2007 Comprehensive Plan. He noted, however, that there are other criteria against which zone changes must be evaluated, including the inappropriateness of the existing zoning and whether any changes of a physical, social, or economic nature have occurred in the vicinity of the property. The petitioner changed the subject properties such that it is no longer appropriate for residential use; they contend that the cost of restoring those properties for residential use would be so prohibitive that the existing zoning is now inappropriate; and the proposed P-1 zone, with conditional zoning restrictions, is appropriate. Since the petitioner does not have the resources to maintain the subject properties in addition to their new facility, they need to sell the properties as quickly as possible, and they do not believe that another school will want to locate there. Mr. Simpson said that the petitioner contends that the proposed use of the subject property for the Child Advocacy Center and a law office would accommodate the needs of the neighborhood.

Mr. Simpson displayed photographs of the subject properties and surrounding area, noting the nearly 7,000 square-foot institutional building at the rear and the breezeway connecting two of the buildings; the 14,000 square feet of existing pavement on the properties; an existing hair salon at the intersection of North Hanover Avenue and Cramer Avenue, which has not set a precedent for business zoning in the area; the gas station and restaurant at the North Ashland Avenue/East Main Street intersection; Temple Adath Israel, located 180' from the subject properties; a clothing bank, located across the street from the subject properties; Heritage Baptist Church, located across the street from the subject properties; Ashland Elementary School, located 400' from the subject properties; the existing Walton Avenue location of the Children's Advocacy Center, as well as several other offices on Walton Avenue; a closer view of the large rear addition to the 158-162 North Ashland Avenue properties; the existing handicap ramp to the structure at 154 North Ashland Avenue; the parking lot and playground behind the subject properties; the existing screening for the parking area; and the interior drop ceilings, staircase, stall-style restroom facilities, soundproof hearing testing rooms, blackboards and classroom shelving units, commercial lighting, sprinkler systems, emergency doors, large assembly room, breezeway, and exposed pipes in the structure at 158-162 North Ashland Avenue.

Mr. Simpson stated that the petitioner understands the concerns about setting a precedent for other rezonings in the North Ashland Avenue neighborhood, but believes that the Planning Commission has the power to prevent that precedent. He said that the petitioner does not want to have to remove existing buildings, in good repair, in order to be able to sell the subject properties.

Mr. Simpson said that the petitioner had consulted with Back Construction about the possible cost of converting the structures on the subject properties back to residential use. He referred to the report by Back Construction that was included in his exhibit packet, noting that the cost of converting 154 North Ashland Avenue could be as high as \$209,000; for 162 North Ashland Avenue, the cost could be \$343,000; and for 158 North Ashland Avenue, \$217,000. The petitioner contends that no buyer would be willing to assume those costs, since the home would then be far out of scale with the cost of other homes in the area. Mr. Simpson explained that he asked Bob Rouse to prepare a "scaled-back" estimate for the conversion of the structures for residential use, and Mr. Rouse was able to prepare a somewhat lower estimate than Back Construction. Mr. Rouse's proposed cost estimates, which were also included in Mr. Simpson's exhibits, were: \$98,000 for 154 North Ashland Avenue; \$240,000 for 158 North Ashland Avenue, which would include demolition of the large rear addition to the structure; and \$147,000 for 162 North Ashland Avenue. Mr. Simpson explained that those figures represent estimates for the basic conversions for each property.

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King Offutt, Board Chairman of the Lexington Hearing & Speech Center, stated that the subject properties were listed for sale prior to the petitioner's relocation to their new facility. He said that, after being advertised for several months through many different listing agencies, there had only been three serious offers for the two connected structures with the large rear addition, and only one offer for the smaller structure, which was made by the law firm that is currently seeking to locate there. Mr. Offutt stated that all three of the entities that expressed interest in the larger structures were non-profits, which would not be able to locate on the subject property under the current R-1D zoning. The Child Advocacy Center, which is currently under contract to purchase the buildings, indicated an interest in the two larger structures, and invested a great deal of time and money in evaluating them. The petitioner is optimistic that the subject properties will be rezoned to P-1 in order to allow the Child Advocacy Center to locate on the subject properties, particularly since they believe that, should the properties not be rezoned, they will remain vacant and become a detriment to the neighborhood.

Commission Questions: Ms. Copeland asked if Mr. Simpson had any photographs that depicted the interiors of the residential structures on the subject properties, since most of his interior photos had focused on the large addition. She also asked if Mr. Simpson could explain what was good about the structures for residential use. Mr. Simpson responded that he had many more photographs, but he believed that Bob Rouse could better answer Ms. Copeland's question. Ms. Copeland said that she had gotten the impression from Mr. Simpson's photographs that the interiors of all the structures were institutional in character, although the residential structures were still largely intact. Mr. Simpson said that those residential structures had been changed. He asked Bob Rouse, who prepared an estimate for the conversion of the structures for residential use, to address Ms. Copeland's question. He said that conversion of the structures would require the construction of new walls, residential bathrooms, and kitchens. He explained that the estimates were so expensive due to the large amount of work that would be required to convert those structures.

Ms. Roche-Phillips asked if Mr. Simpson had referred to adding restrictions to the proposed rezoning via deed restrictions, or development plan notes. Mr. Simpson answered that either option would be appropriate. He said that the petitioner had made a pledge that, if the residential units on the subject property were ever destroyed, they would be reconstructed as residential units. He said that the only way to do that legally, since such a restriction could not be enforced via conditional zoning, would be to include that restriction as a development plan note. The petitioner has also agreed to provide 30 days' advance notice of any proposed change to the subject properties to the presidents of the Bell Court and Mentelle Park Neighborhood Associations. Mr. Simpson noted that, typically, development plan changes do not require notice, but the petitioner is attempting to add every possible safeguard in order to reassure the area residents that no changes will be made to the subject property without their knowledge.

Citizen Support: Guy Bradley, treasurer of the Children's Advocacy Center (CAC), stated that he believes that the properties at 158 – 162 North Ashland Avenue would be a good fit for his organization, for several reasons. He said that the CAC was initially attracted to the subject properties because the structures appear residential in nature, which is in keeping with their current facility on Walton Avenue. The CAC is currently out of available space for expansion, and they believe that the subject properties will be able to accommodate their future needs, although they do not currently need the amount of existing parking spaces.

Mr. Bradley said that CAC intends to maintain the existing structures, without altering them at all. They contend that their use of the properties will be much less intense than the former school use, since they have only four full-time employees. Mr. Bradley noted that the CAC is hoping to use the large rear addition to the structures as a location for offices for the police detectives who work closely with their agency.

David Care, 150 North Ashland Avenue, stated that his home is located next door to the subject property at 154 North Ashland Avenue. He thanked the petitioner for being good neighbors during the time that their facility was located on the subject properties, and for working diligently to find good tenants for the properties.

Mr. Care said that he had initially been concerned about the proposed rezoning of the subject properties, but he was now comfortable with the proposals because of the petitioner's dedication to preserving the existing structures, and their proposed restrictions that would prohibit any redevelopment there. He stated that he believes that the proposed professional office uses on the subject properties would be less intense than the school. Mr. Care said that he had spoken with both of the proposed buyers of the properties, and he feels comfortable with the location of a law office and the Child Advocacy Center there.

Mr. Care stated that he had spoken with several of the residents of North Ashland Avenue, and he had obtained several signatures and a letter of support for this proposal. He noted that many of the residents were not aware of the proposed restrictions for the property; after they were informed of those restrictions, they chose to sign the support petition, even though they had initially signed the opposition's petition.

Note: Mr. Paulsen left the meeting at this time.

Citizen Objectors: Lewis Gardner, president of the Mentelle Neighborhood Association, stated that he was present to speak on behalf of the association because Mike Meuser, the attorney that they had previously retained, had resigned the day prior to this hearing due to a conflict of interest.

Mr. Gardner said that the Mentelle Neighborhood Association was started in 2006, in an area that was unusual in that it did not have an established association. He explained that many neighborhood associations are organized in opposition to proposed rezoning, and there have been very few such proposals in the Mentelle area. Mr. Gardner said that there were several residents in the audience at this meeting, although many had been unable to attend due to work responsibilities. He asked all of the Mentelle residents in opposition to stand; approximately seven people stood.

Mr. Gardner stated that the Mentelle Neighborhood Association held a meeting to discuss this rezoning request, and decided to oppose it, hire a lawyer, and compile a petition. He circulated a copy of the petition and summary to the Planning Commission members, noting that the petition had been circulated to 371 residences, and had received 203 signatures in opposition. Mr. Gardner read the following statement into the record from the petition:

"The Mentelle Neighborhood Association is opposed to rezoning the former Lexington Hearing & Speech Center properties at 154, 158 and 162 North Ashland Avenue from R-1D (Single Family Residential) to P-1 (Professional Office) for the following reasons:

- P-1 is not in the character of the neighborhood. The Planning Commission has recognized this twice by downzoning most of our neighborhood to R-1D.
- Zoning several lots P-1 in the middle of an R-1D area can put rezoning pressure on surrounding properties.
- Professional office usage could change the character of the neighborhood.
- The screening variances requested in the rezoning could be a problem for neighbors."

Mr. Gardner said that the association members who circulated the petition found only 10 homes with residents in support of this request. He noted that there could possibly have been more residents in opposition had the petition not been circulated on a nice weekend, when many residents were not at home.

Mr. Gardner stated that the residents who signed the petition indicated that they did not believe that "spot zoning" the subject property was a good idea. He said that all of the residents liked the petitioner, and believed that they had been good neighbors. They are not opposed to the Children's Advocacy Center locating on the subject properties, but they do not believe that it would be appropriate to rezone one property for professional office use in the middle of a residential area. Mr. Gardner said that he and his neighbors also do not believe that it is good practice to rezone a property for a specific buyer, since the zoning will most likely outlast the occupancy of that use.

Gil Dunn, 38 Mentelle Park, stated that he has lived on his street, two blocks to the east of the subject property, since 1994. He said that, since that time, he has witnessed the renovation of the neighborhood and an influx of young families. Mr. Dunn explained that the Mentelle neighborhood is unique, walkable, and has a good mix of uses, and he is concerned that rezoning the subject properties for professional office use would have a detrimental effect on the neighborhood. He asked the Planning Commission to follow the staff's recommendations, and disapprove this proposed rezoning.

Kevin Murphy, 141 West Bell Court, stated that the Planning Commission had received a copy of the letter he had written to them on September 26, 2011, noting his objections to this proposed rezoning.

Mr. Murphy stated that the Bell Court neighborhood is separated from the Mentelle Park neighborhood by Walton Avenue, which has undergone a transition that resulted in it becoming more commercial in nature. He said that he would like to commend Mr. Gardner and his neighbors on their grass roots effort to oppose this request, although he believes that it is unfortunate that residents would have to hire an attorney to maintain their lifestyles and home values.

Mr. Murphy said that the 2007 Comprehensive Plan had many land use categories versus long-range plan use groups. He noted that the Comprehensive Plan will be updated in 2012, and he urged the Planning Commission members to carefully consider how many of the 25-year land use recommendations are necessary. Mr. Murphy stated that he was chosen in 1986 to serve on the committee that assisted with the 1988 Comprehensive Plan; as part of that process, he spoke to many neighborhood groups about the comprehensive planning process. At the time, he told those groups that the Comprehensive Plan is "where neighborhoods lose the war before the battles even begin."

Stephanie Ashman-Spires, 111 North Ashland Avenue, stated that she is the parent of a child who attends the Lexington Hearing & Speech Center. She said that her house was originally owned by the Kentucky Female Orphan

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School and was used as a dormitory by Kentucky Baptist College in the 1990s; the necessary renovations to restore it to a single-family home are expected to cost over \$200,000.

Ms. Ashman-Spires said that she understands the position that the petitioner is in, but believes that they should have considered all of the financial ramifications of leaving the subject properties and relocating to another facility prior to beginning the transition. She stated that she did not want the subject properties to remain vacant or fall into disrepair, but she wants her neighborhood to remain residential in character with business uses within walking distance along East Main Street and Walton Avenue. Ms. Ashman-Spires concluded by noting that, as a foster parent, she supports the work of the Children's Advocacy Center, and is not opposed to them locating their facility on the subject properties; however, she cannot support the location of a law office in her neighborhood.

Petitioner Rebuttal: Mr. Simpson stated that the petitioner appreciates the neighbors' concerns, and tried to anticipate and address them as much as possible during the rezoning process. The petitioner invited every resident within the 400' notification area to a meeting in September; 15 residents attended the meeting, which was held at Heritage Baptist Church. Mr. Simpson said that the petitioner believes they have been candid and forthcoming with the area residents in every instance.

With regard to the petition that was submitted in opposition to this request, Mr. Simpson stated that one of the problems with petitions is that they are often accompanied by misinformation. He noted that the language included on the opposition petition states that Mentelle Park is zoned R-1D, when it is actually zoned R-2.

Mr. Simpson stated that most of the North Ashland Avenue residents support the location of the Children's Advocacy Center on the subject property, and only a few have expressed concerns about the proposed law office. The petitioner contends that a law office would act as the perfect buffer between the large parking area on 158-162 North Ashland Avenue and the residence next to 154 North Ashland Avenue. Mr. Simpson noted that the owner of that residence agrees, and supports the location of the law firm there. He added, with regard to the concerns that were expressed about a hair salon or doctor's office locating on the subject property, that those uses would be prohibited under the proposed conditional zoning restrictions. The petitioner believes that the proposed uses on the subject property will be less intense than the former school and daycare center.

Mr. Simpson said that, if the subject property had been used as a residence and the petitioner wished to rezone it to P-1, he would not have agreed to represent them, as it would destroy his credibility. He stated that the Planning Commission members are "the guardians of every single case" that comes before them. The petitioner contends that the circumstances on the subject property are unusual, and they would like to have the opportunity to sell the subject properties in a manner that will preserve the integrity of the neighborhood.

Citizen Rebuttal: Mr. Gardner stated that the Planning Commission has a difficult decision to make, and that the subject property is unique. He noted that the citizens in opposition to the proposed rezoning agree that a non-profit organization should occupy a portion of the subject properties, but they do not believe that a law office should locate in the building located at 154 North Ashland Avenue, since that is clearly a business use.

With regard to Mr. Simpson's comments about the light attendance at the neighborhood meeting, Mr. Gardner said that many of the residents did not receive notification of that meeting. He was first informed of the meeting one day prior to the scheduled date, and did not have sufficient time to notify very many of his neighbors beyond the 400' notice area.

Mr. Gardner said, with regard to the proposed condition that refers to demolition of the structures on the subject property, that he was verbally informed at the neighborhood meeting that the petitioner had agreed to such a condition, but he never received that agreement in writing.

Mr. Gardner stated that the Planning Commission members' predecessors had twice determined, through the two downzonings, that they intended for the residential character of the North Ashland Avenue area to be maintained. He added that, although this rezoning "appears necessary," the Commission members must consider whether or not it is actually necessary.

Commission Comments: Ms. Roche-Phillips stated that she would be unable to vote on this item, as she had a prior commitment and must leave the meeting, and she thanked Chairman Cravens for giving her the opportunity to get her comments on record.

Ms. Roche-Phillips stated that, after listening to the neighbors' testimony, it appeared that they were not opposed to the proposed land use for the Children's Advocacy Center. She noted that she had had discussions with the staff about the possibility of declaring the Children's Advocacy Center as a semi-public use, so that it could locate on the subject property without a rezoning to P-1. Since the staff determined that it could not be considered as a semi-public use, she suggested that they consider the possibility of an appeal to the Board of Adjustment or a text amendment to the Zoning Ordinance to address the issue.

Ms. Roche-Phillips said that this was not an easy rezoning decision, since it affects three existing non-residential lots in a beautiful neighborhood area, and the rezoning could be detrimental to the neighborhood. She added that she is empathetic to the needs of the Children's Advocacy Center as well, and she would like for the Commission to pursue a solution that would allow that entity to locate on the subject property without a rezoning to P-1.

Citizen Question: Mr. Gardner asked if it would be appropriate to postpone this request in order to find some other means to allow the Children's Advocacy Center to locate on the subject property without a rezoning.

Note: Ms. Roche-Phillips left the meeting at this time.

Legal Comments: Ms. Boland stated that, if the subject properties are not rezoned, the use must be a permitted conditional use in the zone, or more substantially similar to a permitted conditional use than any other possibility. She said that the staff had researched all of the permitted conditional uses in the R-1D zone, and it would be impossible to fit the Children's Advocacy Center into any of those conditional uses. She added that she did not see any way that that particular use could locate on the subject property without a zone change.

Staff Rebuttal – Ms. Wade indicated that the staff did not have any rebuttal.

Commission Questions: Mr. Penn asked if the rear addition was within the scope of what is permitted within the R-1D zone, or if that addition was constructed prior to the rezoning to R-1D. Ms. Wade answered that she would have to check the records for the exact information about the approval of the addition, but she believed that the subject property was zoned R-2 at that time. She said that the petitioner would have been allowed by the Board of Adjustment to expand as long as the expansion was in agreement with the site plan. Mr. Penn asked if the changes in appearance from a residential look to a more commercial one would have been allowed, to which Ms. Wade answered affirmatively, but noted that it was for a school, which was an approved conditional use. Mr. Penn asked if the staff would have a different recommendation on this request if it was to allow only the Children's Advocacy Center to locate on the subject properties, and not a law firm. Ms. Wade responded that the staff's recommendation would be unchanged.

Ms. Blanton asked if there were any zones between the R-1 and P-1 zones that would allow the Children's Advocacy Center to locate on the subject property. Ms. Wade answered that the P-1 zone is the first one in which professional office uses are permitted. She explained that the definition of "home occupation" would permit a home office, but not a professional office in the manner in which these two uses are proposed, since no one would reside on the property. Ms. Blanton said that she was concerned that, if the rezoning is not approved to accommodate the proposed use, the subject properties will remain vacant and become a detriment to the neighborhood. She asked how likely it would be for a small school to appeal to the Board of Adjustment for a conditional use permit to locate there. Ms. Wade responded that Mr. Sallee might provide a better answer to that question, since he worked more frequently with Board of Adjustment cases. Mr. Sallee stated that most of the Board of Adjustment cases that are filed are for the expansion of existing schools, rather than for new schools.

Mr. Owens stated that the petitioner had offered to apply a deed restriction, which the Planning Commission could not mandate, to limit the uses on the subject property. He asked Mr. Gardner to speak to the residents' opinion of such a restriction. Mr. Gardner said that the residents at the neighborhood meeting were unequivocal in their opposition to this request, since they believed that many of the proposed solutions were too complex. He stated that he had not heard about the petitioner's proposed condition to require that the structures could only be replaced with buildings that were similar in character prior to this meeting, but he believes that it could be a positive. Mr. Gardner noted that he did not know how the residents who signed the petition would feel about that proposal, since they were opposed to the P-1 zoning rather than the proposed use of the properties.

Ms. Copeland asked if the neighborhood had thought of the "perfect buyer" for the subject properties. Mr. Gardner answered that the Children's Advocacy Center would be the perfect use for the largest structure. Ms. Copeland asked if the neighbors would be satisfied if the Planning Commission could find a way to accommodate the Children's Advocacy Center without rezoning the subject properties to P-1. Mr. Gardner answered affirmatively.

Hearing Closed: Mr. Cravens declared the public hearing closed.

Discussion: Ms. Copeland asked if Mr. Simpson knew of any "creative solution" that would allow the Children's Advocacy Center to locate in the existing structures at 158 – 162 North Ashland Avenue, without rezoning the properties to P-1. Mr. Simpson answered that there was no way to do that without a zone change. Ms. Copeland asked what other zone would allow that use to locate there. Mr. Simpson said that there was no other zone that he was aware of that would allow that. Ms. Copeland asked if a text amendment could be drafted to accommodate that use. Mr. Simpson answered that a text amendment is typically a six to nine-month process, and it would not be appropriate due to the implications of allowing an office use in a residential zone. He said that, under the current rules, there

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was no means by which to locate a non-profit agency as a professional office use in a residential zone. He noted, however, that the proposed restrictions and development plan note could effectively create the kind of situation to which Ms. Copeland was referring. Ms. Copeland asked if the petitioner would be willing to remove the law office as a proposed use. Mr. Simpson replied that the petitioner believes that the proposed law office would provide the perfect buffer for the adjoining residence.

Mr. Penn stated that the possibility of spot zoning, and zoning for a specific use, bothered him. He asked if the petitioner's proposed deed restriction to limit 65% of the possible P-1 uses would still apply if the subject properties were sold in the future. Ms. Boland answered that deed restrictions are often challenged in court, with varying results. She said that the concept of such a restriction could be legally enforced, but she would be concerned about the proposed wording of "rebuild only in a residential character" because it is vague and the courts might not find it enforceable. Ms. Boland stated that it would be a deed restriction that was obviously put in place for the protection of the surrounding neighborhood, so it would befall the neighborhood to ask the court to enforce it; the court would then have to interpret the restriction. She noted that the use of "residential" could leave the restriction open to many different interpretations, including apartment residential, and opined that the language would need to be specific enough to be enforceable. Mr. Penn said that that was his concern; he did not want to make this difficult decision, and then learn that the restriction might not be enforceable.

Mr. Penn asked Mr. Simpson if he would be comfortable with the enforceability of the proposed restriction, should the Children's Advocacy Center someday wish to sell the property. Mr. Simpson answered that the Planning Commission and the Urban County Council have no jurisdiction over deed restrictions. He explained that, in approximately 60% of his controversial cases, deed restrictions have been negotiated as part of a settlement, and he was not aware of any such restrictions that had been overturned. Such restrictions are usually specifically crafted to suit the situation, and they supersede zoning, so the property could not be rezoned. Mr. Simpson added that, since the Planning Commission cannot enforce deed restrictions, the petitioner has offered to add a note to the development plan, over which they would have jurisdiction. He offered the following clarification for the language of the development plan note: "In the event that the residential structures that exist today are, for whatever reason, destroyed, they shall be substantially rebuilt in the same style and architecture as they were prior to destruction." The staff would then be able to take photographs in order to document the appearance of the structures, and the condition would be fully enforceable. Mr. Penn thanked Mr. Simpson, and noted that the language of the note would be included in the record of the meeting.

Mr. Owens asked if it would be appropriate and/or possible for the petitioner to request postponement of this item, in order to draft language with which all parties could be satisfied. Ms. Boland answered that that decision would be up to the petitioner. Mr. Simpson stated that he did not believe that he could be any more specific with regard to the development plan note, and that it would not be appropriate for the Planning Commission to get involved with deed restrictions. He said that he did not believe that a postponement would help, since the language he proposed was already as specific as possible. Mr. Simpson added that the petitioner would agree, if the subject property is rezoned, to a deed restriction that incorporates the provision of the conditional zoning restrictions and the covenant that he suggested as a development plan note.

Mr. Wilson asked if the petitioner had had some offers on the subject property. Mr. Offutt answered that there had been three offers on the property, all from non-profit agencies that would not be able to locate on the property unless it is rezoned to P-1. Mr. Wilson said that the Planning Commission's only choices were to approve or disapprove this request, and he was not totally comfortable with either of those options.

Mr. Berkley stated that he echoed some of the other Commission members' comments, and noted that he is concerned about what might happen to the subject property if it is not rezoned. He said that the petitioner's efforts to limit the types of uses that could locate on the property in a restricted P-1 zone show that they are concerned about the neighborhood, and are willing to work with the residents on the best solution. He added that professional uses have been successfully incorporated in most of the other neighborhoods between North Ashland Avenue and downtown, and he will be supporting this rezoning request, for that reason.

Mr. Penn stated that the Planning Commission is currently in the process of the 2012 Comprehensive Plan review, and he does not consider the land use map lightly. He said that he is not comfortable with spot zoning as a concept, and that he had never seen a situation like this one during his tenure on the Planning Commission. Mr. Penn echoed Mr. Wilson's statement that both sides in this situation have good intentions, and the Planning Commission is faced with a very difficult decision. He said that he does not blame the area residents for being concerned about the future of their neighborhood, but he intends to support this proposed rezoning, because he believes that "the good outweighs the bad."

Mr. Cravens stated that, if the subject properties had been used as residences, the Planning Commission would have a clear-cut decision to disapprove this request. He noted that, since the subject property had been used as a school since before 1969, and the neighborhood contains a mix of uses, he believes that the proposed rezoning to P-1 to accommodate the Children's Advocacy Center would be appropriate. Mr. Cravens noted that most of the

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neighborhood is currently zoned R-2, and those properties could be redeveloped with duplexes. He opined that the residential zoning could possibly accommodate an apartment use, especially given the size of the structure. Mr. Cravens said that he understands the concerns about setting a precedent, but the Planning Commission could “raise the bar” so that that does not happen.

Zoning Action: A motion was made by Mr. Owens, seconded by Mr. Penn, and carried 5-2 (Copeland and Wilson opposed; Beatty, Brewer, Paulsen, and Roche-Phillips absent) to approve MARV 2011-12, for the following reasons:

1. Most of the permitted uses listed in the conditional zoning restrictions could be considered semi-public facilities in agreement with the Comprehensive Plan. Further, the impact of the permitted office uses will be minimized by retaining the residential character of the original structures on the property.
2. Rezoning the property to P-1 with the conditional zoning restrictions will allow the same intensity and types of uses and general hours of operation on the site that have taken place here for the last forty years. These types and intensity of uses have integrated well with the adjoining residential neighborhood.
3. Rezoning the property to P-1 will protect the character of the neighborhood by maintaining the status quo because the uses, intensity of uses and the appearance of the property will remain substantially unchanged, with the conditional zoning restrictions. This will provide continued stability to the area.
4. Approving the rezoning will not trigger the “major change” provisions of KRS 100.213(c) because the intensity, scale, existing buildings and uses will remain the same under P-1 zoning.
5. Under the provisions of Article 6-7 of the Zoning Ordinance, the subject property shall be restricted to only the following uses and their accessory uses as offered by the petitioner, via conditional zoning:
 - a. Offices for business, professional, real estate, governmental, civic, social, fraternal, political and charitable organizations;
 - b. Schools for academic instruction;
 - c. Libraries, museums, art galleries, and reading rooms;
 - d. Studios for work or teaching of fine arts such as photography, music, drama, dance and theater;
 - e. Community centers, houses of worship and associated schools for religious instruction;
 - f. Kindergartens, nursery schools and child care centers for four or more children. A fenced and screened play area shall be provided, which shall contain not less than 25 square feet per child; and
 - g. Dwelling units on upper floors of structures in which the first floor is occupied by another permitted use in the P-1 zone, with no mixing of dwelling units on any floor.

Granting this zone change is conditional on imposing the restrictions, which are necessary and appropriate in order to maintain the same level, type, character and intensity of uses on the property in order to protect the adjoining residential properties from incompatible uses.

Petitioner Comment: Mr. Simpson stated that the petitioner would like to withdraw the requested height variance at this time, as recommended by the staff for 158-162 North Ashland Avenue.

Variance Action: A motion was made by Mr. Owens, seconded by Mr. Penn, and carried 7-0 (Beatty, Brewer, Paulsen, and Roche-Phillips absent) to accept withdrawal of the height variance as requested, and approve the other requested variances, for the following reasons:

- a. Granting the requested variances should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The site currently has 25 on-site parking spaces that were developed in conjunction with the school as a conditional use. There are generally 20-27 on-street parking spaces available within a two-block area of N. Ashland Avenue, which can easily accommodate any overflow parking the proposed reuse of this site may generate.
- b. If the rezoning to P-1 is approved, approval of the variances will not result in an unreasonable circumvention of the Zoning Ordinance. The proposed reuse of these buildings and existing parking lot can easily utilize available on-street parking should additional parking be necessary above and beyond that available onsite.
- c. The special circumstance that applies to the subject properties that serves to justify the variances are the proposed reuse of the existing development, and the reuse proposed for the existing parking lot.
- d. Strict application of the requirements of the Zoning Ordinance would create an unnecessary hardship to the applicant to provide the minimum required off-street parking on site. Large areas of open space would need to be replaced with additional asphalt in order to create a larger parking lot, which would diminish greenspace, impact stormwater retention, and would be costly.
- e. The circumstances surrounding this request are not the result of actions taken by the applicant since the original adoption of the Zoning Ordinance, as the use of the property has remained consistent since the 1950s.

For the requested landscape variances for 154, and 158-162 N. Ashland Ave.:

- a. Granting the requested variances should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The site has existed “as is” for decades, with an existing screen from many

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- surrounding residential neighbors. The proposed reuse of this site, in its current configuration, will not create a necessity for additional screening and landscaping.
- b. Approval of the landscape variances will not result in an unreasonable circumvention of the Zoning Ordinance.
 - c. The special circumstance that applies to the subject properties that serves to justify the variances is the proposed reuse of the existing development. In order to provide the required landscaping, existing pavement will need to be removed, thus reconfiguring the parking lot to accommodate both the parking and the landscape buffers.
 - d. Strict application of the requirements of the Zoning Ordinance would create an unnecessary hardship to the applicant, and would likely lead to an inferior buffer since new vegetation would supplant mature screening material.
 - e. The circumstances surrounding this request are not the result of actions taken by the applicant since the adoption of the Zoning Ordinance.

The approval is made subject to the following conditions:

1. Provided the Urban County Council rezones the property to P-1; otherwise, any Commission action of approval of this variance is null and void.
2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, unless amended by a future Development Plan approved by the Commission, or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
3. A note shall be placed on the Zoning Development Plan indicating the variances that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).
4. Prior to any construction or erection of signs, the applicant shall obtain the necessary permits.
5. The landscape variances are subject to the adaptive reuse of the existing parking lot. If the open space areas (playgrounds) are to be paved for parking, then the standard landscaping and screening required by the Zoning Ordinance shall apply.

Development Plan Action: A motion was made by Mr. Owens, seconded by Mr. Penn, and carried 7-0 (Beatty, Brewer, Paulsen, and Roche-Phillips absent) to approve ZDP 2011-69, subject to the 13 conditions as listed on the agenda.

Commission Comment: Mr. Owens stated that he appreciated the residents' concerns about the rezoning. He said that he had come to this hearing with one opinion about this request; but, after hearing about the petitioner's efforts to maintain the subject properties and protect the character of the neighborhood, he had changed his mind.

VI. COMMISSION ITEMS

- A. MEADOWTHORPE NEIGHBORHOOD ZONE CHANGE INITIATION REQUEST** – petition request received from residents of the Meadowthorpe neighborhood for Planning Commission initiation of an ND-1 overlay zone.

The Zoning Committee made no recommendation on this request.

Ms. Wade briefly oriented the Commission to the location of the Meadowthorpe neighborhood, noting that it is to the north of Leestown Road, inside New Circle Road; to the northwest of Price Road and the Lexington Cemetery; and across from the Townley Park shopping and residential area. She said that the Meadowthorpe Neighborhood Association had been going through the initial phases of the ND-1 process for some time, and they have now requested Planning Commission initiation of an ND-1 overlay zone. The neighborhood association has completed the required petition and design study, copies of which were distributed to the Commission members.

Ms. Wade stated that one of the requirements of the ND-1 application process is a postcard mailing to each of the properties within the area proposed for the overlay zone. The Planning staff mailed notice letters and postcards to all of the just over 480 properties in the neighborhood earlier this month, and they received 239 postcards back, or just less than half. Of the 239 postcards returned, 198 of them, or 82.8% were in favor of the proposed ND-1 zoning; 37 responses, or 15.5%, were opposed; and four respondents expressed no opinion. Ms. Wade noted that the Commission had received copies of the seven proposed design guidelines, which were also sent to the property owners along with the notice letter and postcard mailing. She added that the staff had received one letter in opposition to the initiation, which was circulated to the Commission members for their review.

Commission Questions: Mr. Owens asked how many mailed postcards had been returned. Ms. Wade answered that the staff received 239 postcards. Mr. Owens asked how many had been mailed out, to which Ms. Wade replied that 484 postcards had been sent.

Mr. Cravens said that, if 198 postcards in favor of ND-1 zoning were received, that represents less than half of the total number of residences. Ms. Wade replied that the Planning Commission only needs to consider the number of postcards that were returned. The staff informs the neighborhood association at the outset that the count provided to the Planning Commission will only take into consideration the postcards that are returned. Ms. Wade noted that the neighborhood association had to make several rounds of resident contacts in order to notify homeowners and distribute the petition, so there might be some apathy with the initial postcard mailing.

* - Denotes date by which Commission must either approve or disapprove request.

Neighborhood Presentation: Coleman Bush, 324 Pelican Lane, thanked the staff and the Planning Commission for their assistance during the three-year process that brought the Meadowthorpe Neighborhood Association to this point. He said that, during the hearing for the previous zone change, Ms. Wade had referred to the Goals of the Comprehensive Plan, some of which include preserving and protecting older neighborhoods. The Planning Commission has demonstrated their support for preserving older neighborhoods by approving ND-1 overlay zoning for the Chevy Chase and Montclair neighborhoods.

Mr. Bush stated that the residents of the Meadowthorpe neighborhood believe that it is unquestionably worth preserving. The neighborhood was established in 1949, and has not undergone many of the unfavorable changes that were experienced by the Chevy Chase and Montclair neighborhoods. Meadowthorpe is characterized by medium-sized brick or stone houses, with little siding; consistent setbacks; and an appealing appearance. Mr. Bush said that Meadowthorpe was first occupied by the "greatest generation," and serves as an example of the beliefs and ideals of that period in the country's history; and, as such, is worthy of preserving.

With regard to the postcard mailing, Mr. Bush stated that the staff is not required to send follow-up postcards; but the neighborhood association had followed up on that mailing several times, with both resident and non-resident property owners. There was a 77.3% response rate for the petition, which was just a bit higher than the response to the Chevy Chase ND-1 petition. The neighborhood association is proposing seven standards, and they gave each property owner the opportunity to offer their opinion separately on each standard.

Mr. Bush said, in conclusion, that he believes that Meadowthorpe is at the perfect point in its life cycle to apply ND-1 zoning, unlike Montclair, where unfavorable changes had already occurred. He said that the neighborhood association had drafted the following goals for the ND-1 process:

- "To protect against the degradation of Meadowthorpe, a special place of aesthetic and cultural significance in Lexington;
- To encourage the preservation of Meadowthorpe's original structures through adaptive rehabilitation when necessary;
- When adaptive rehabilitation is necessary or desirable, to encourage construction that will lead to continuation, conservation, and improvement in a manner appropriate to the scale and physical character of the original buildings;
- To foster civic pride in Meadowthorpe as a community and as an exemplary subdivision of the post-World War II era."

Commission Questions: Mr. Penn stated that he hopes that the Meadowthorpe Neighborhood Association intends to continue the work that they have done up to this point, since initiation is just the first step in the rezoning process. He said that several of the Planning Commission members had been through the ND-1 process before, and had found that the property owners who did not respond to the postcard mailing might have questions about the effect of the rezoning on their property rights. Mr. Penn encouraged the neighborhood association to continue their discussions with property owners, so that everyone will be aware of the intent of the process. He added that there had been questions about the validity of some ND-1 petitions; and the neighborhood association must make a commitment to the process, since initiation of ND-1 zoning is no guarantee that the rezoning will actually occur. Mr. Bush stated that the neighborhood association would make that commitment.

Action: A motion was made by Mr. Penn, seconded by Mr. Wilson, and carried 5-2 (Blanton and Cravens opposed; Beatty, Brewer, Paulsen, and Roche-Phillips absent) to initiate the Meadowthorpe neighborhood ND-1 overlay zoning as requested by the Meadowthorpe Neighborhood Association.

- B. ADOPTION OF THE OFFICIAL MEETING & FILING SCHEDULE FOR 2012** – Mr. Sallee presented the recommended Official Meeting and Filing Schedule for 2012, and requested that the Commission consider its adoption.

Action: A motion was made by Ms. Blanton, seconded by Mr. Wilson, and carried 7-0 (Beatty, Brewer, Paulsen, and Roche-Phillips absent) to adopt the Official Meeting and Filing Schedule for 2012, as presented by the staff.

VII. STAFF ITEMS – No such items were presented.

VIII. AUDIENCE ITEMS – No such items were presented.

IX. MEETING DATES FOR NOVEMBER, 2011

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	November 3, 2011
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	November 3, 2011
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	November 10, 2011
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	November 17, 2011
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	November 23, 2011

X. ADJOURNMENT

Revised 11/28/11 wls
To be considered by PC on 12/8/11
TLW/TM/BJR/BS/src

* - Denotes date by which Commission must either approve or disapprove request.